Supreme Court, U.S.
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No. 97-974

In The

Supreme Court of the United States

October Term, 1997

CLIFFORD EUGENE DAVIS, JR., ET AL., and JOHNNIE A. JONES, Attorney,

Petitioner,

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeal For The Fifth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

Attorneys for Respondent:

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QUESTIONS PRESENTED

1. Whether the law of the case doctrine is applicable and bars relitigation of Petitioner's claim for attorney's fees for services allegedly rendered during the time period commencing on September 27, 1962 and ending on April 22, 1981?

2. Whether Petitioner's remaining claims for attorney's fees for work in pursuit of his claims for fees during the time periods commencing on May 1, 1981 and ending on April 22, 1996 were properly denied?

LIST OF PARTIES

The following persons were parties to the proceedings in the Court of Appeals:

JOHNNIE A. JONES,

Mover/Appellant,

and

EAST BATON ROUGE PARISH SCHOOL BOARD,

Defendant/Appellee.

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TABLE OF OFFICIAL AND
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CLIFFORD EUGENE DAVIS, JR., ET AL. vs.
EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,
No. 96-31074,

United States Court of Appeal for the Fifth Circuit
(Unpublished Opinion on Appeal,
Dated September 10, 1997)

STATEMENT OF THE CASE

The present application for an award of attorney's fees marks the second time Petitioner has filed an application in this civil action.[1] A summary of the prior proceedings and rulings is necessary for an understanding of the matters before this Court.

A. The April 16, 1981 Application for an Award of Attorney's Fees

Petitioner's first application for an award of attorney's fees was filed on April 16, 1981.[2] An "Affidavit Forming Basis of Motion for Attorney's Fees Submitted By and On Behalf of Johnnie A. Jones, Attorney for Plaintiffs" was filed on April 22, 1981.[3] The application was not filed by any plaintiff in the civil action. It was filed by Petitioner, in proper person, for himself. Neither the application nor the affidavit identified with any specificity the clients Petitioner had represented, or the result he obtained for them.

Petitioner sought attorney's fees in the amount of $350,000.00 for alleged services rendered "over the years". He claimed "more than 2800 hours" of services

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[1] Petitioner omits any discussion of his first application for an award of attorney's fees and the proceedings thereon in the Statement of the Case in the Petition for Writ of Certiorari.

[2] The "Motion for Attorney's Fees" is contained in Appendix "A", App. 1.

[3] The "Affidavit Forming Basis of Motion for Attorney's Fees Submitted By and On Behalf of Johnnie A. Jones, Attorney for Plaintiffs" is contained in Appendix "B", App. 6.

were performed.[4] Petitioner submitted that his hourly rate of compensation was $125.00.[5] No contract for legal services, fee agreement, or other evidence of a client engagement and the terms of compensation was filed in support of the application. Petitioner's papers did not list the dates his services were rendered, the nature of those services, or the time and effort expended to provide them.

The application was denied by the District Court in a minute entry on May 1, 1981.[6] From the adverse ruling, Petitioner perfected an interlocutory appeal to the Court of Appeals. In an unpublished *per curiam* opinion, dated October 24, 1983, the Court of Appeals affirmed the ruling of the District Court.[7]

Petitioner sought rehearing. He urged as follows:

> The case should be remanded to the District Court to permit appellant, JOHNNIE A. JONES, as one of the attorneys for the original plaintiffs and intervenors in this action which commenced February 29, 1956, and still continues, to meet the requirements necessary to establish the detailed list of criteria which must be proved by a party claiming attorney['s] fees; and to list the

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[4] *Id.*

[5] *Id.*

[6] Unpublished Minute Entry, *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, Civil Action No. 1662-A (M.D. La. 5/1/1981), in Appendix "C", App. 9.

[7] Unpublished Opinion on Appeal, *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, No. 81-3287 (5th Cir. 10/24/1983), in Appendix "D", App. 11.

> names of the plaintiffs and intervenors Appellant represented by extracting this information from the voluminous record.[8]

Rehearing was denied on November 21, 1983.[9]

A petition for writ of certiorari was filed in this Court. Certiorari was denied on February 19, 1985.[10]

B. The Present Application for an Award of Attorney's Fees

The present application and an "Affidavit of Attorney in Support of 'Motion for Attorney's Fees' " were filed on April 30, 1996, some 15 years after Petitioner s first application.[11] Once again, the application was made by Petitioner in proper person for himself. Once again, Petitioner failed to identify with any specificity the clients he had represented, or the result he obtained for them.

The application seeks an award of attorney's fees for alleged services and other work spanning three periods of time. Petitioner alleges during the first period of time

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[8] The Petition for Rehearing is contained in Appendix "E", App. 15.

[9] Unpublished Order on Petition for Rehearing, *Davis, supra*, No. 81-3287 (5th Cir. 11/21/1983), in Appendix "F", App. 20.

[10] *Johnnie A. Jones v. East Baton Rouge Parish School Board, et al.*, 469 U.S. 1227, 84 L. Ed. 2d 364, 105 S. Ct. 1224 (1985).

[11] See "Petition for Writ of Certiorari", No. 97-974, United States Supreme Court, October Term 1997, *Clifford Eugene Davis, Jr., et al., and Johnnie A. Jones, Attorney v. East Baton Rouge Parish School Board, et al.*, Appendix, pp. 42-57.

he rendered 4,660.5 hours of services. This time period, which encompasses the period at issue in the first application, covers from September 27, 1962 to April 22, 1981.[12] The second period of time is alleged to consist of 155.5 hours of work. The work was limited to Petitioner's unsuccessful efforts to reverse the District Court's initial ruling denying him an award of attorney's fees. According to the present affidavit, this period of time, which was not involved in the first application, covers from May 1, 1981 to June 8, 1981. The third period of time, comprised of 35 hours, covers Petitioner's preparation of the present application for an award of attorney's fees. According to the affidavit, this work was performed on April 22, 1996, during a 35 hour period of time.

Petitioner suggests his hourly rate for these time periods is $250.00, and demands fees in excess of $1.2 million.[13] Petitioner claims he spent in excess of 24 hours in a single day on over 30 different days during the three periods of time listed in the affidavit.[14]

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[12] Petitioner's present affidavit offers no explanation as to why the number of hours for this period increased almost twofold from 2,800, in the 1981 application, to in excess of 4,600 hours in the present application.

Moreover, in 1983 the Court of Appeals, in its initial opinion on appeal involving Petitioner's prior application, noted that "[t]he last reference to appellant appearing as a representative of one of the parties in the case is in 1974." See Appendix "D".

[13] This hourly rate of compensation is double the hourly rate stated in the first affidavit. The amount of the fees is over three times the amount sought in 1981.

[14] For example, Petitioner claims he worked for 44.5 hours on February 11, 1963 in connection with review of a "Motion for Further Relief with Companioned Memorandum Order and

C. Rulings of the Lower Courts on the Present Application

The District Court denied the application for an award of attorney's fees.[15] It addressed Petitioner's claims for each of the three periods of time listed in the affidavit. The District Court relied on the principle of *res judicata* in denying the claim for services covering the period from September 27, 1962 to April 22, 1981. In regard to the remaining claims, the District Court observed as follows:

> The request for fees connected with the 1981 appeal is clearly unwarranted in view of the fact that the Fifth Circuit found his prior submission to be 'totally inadequate'. Consequently, the request for fees connected with the present motion is likewise unfounded.

Notice of Motion"; 85.5 hours are listed for June 28, 1963 for review of "Defendant's Motion for Approval of Plan for Orderly Admission of Children to Schools on a Racially Non-Discriminatory Basis"; 170.5 hours are shown for July 17, 1963 for review of "the Memorandum Decision"; 129.5 hours are claimed for services on May 25, 1965 for a "Review and Examination of Deposition of Robert Arthur taken on May 21, 1965 and Attached Exhibits"; a single entry for 460 hours is shown for the entirety of the year 1966; 119 hours are listed for a May 8, 1967 review of an opinion of the District Court; 200 hours are shown on July 31, 1974 for "Review and Examination of Defendant's Answers to Interrogatories and Request for admissions propounded by Intervenors".

[15] Unpublished "Ruling on Motions", *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, Civil Action No. 56-1662-A (M.D. La. 9/18/1996), in Appendix "G", App. 22.

The Court of Appeals affirmed.[16] It upheld the District Court's ruling addressing the claim for fees between 1962 and 1981, agreeing that these claims could not be relitigated. However, its reasoning differed from that of the District Court. The Court of Appeals opined that the claim was barred under the doctrine of the law of the case.[17] None of the recognized exceptions to the doctrine were found to be present. The Court of Appeals noted in this regard, and in respect to the remainder of the District Court's ruling, as follows:

> While, unlike the first fee request, Jones breaks down his work into various dated entries in an affidavit, those entries are implausible on their face. Many of the entries indicate that Jones worked more than 24 hours in a single day. . . . Further, the only work Jones claims to have done after April 16, 1981, the date of his first fee motion, involved his unsuccessful quest for attorney's fees. Accordingly, we follow our prior decision.

SUMMARY OF THE ARGUMENT

1. There exists no reason to reopen issues decided in connection with Petitioner's first application for an award of attorney's fees. The prior Court of Appeals' ruling was not clearly erroneous and does not work a

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[16] Unpublished Opinion on Appeal, *Clifford Eugene Davis, Jr., et al. v. East Baton Rouge Parish School Board, et al.*, No. 96-31074 (5th Cir. 9/10/1997), in Appendix "H", App. 29.

[17] Petitioner incorrectly implies the ruling of the Court of Appeals was based on the principle of *res judicata*.

manifest injustice. No interim change in the law has occurred. No plausible new issues are presented by Petitioner in the application.

2. There exists no basis in law entitling Petitioner to an award of attorney's fees for work done in connection with a failed attempt to prosecute the prior appeal or the present attempt to relitigate his claim.

ARGUMENT ON THE ISSUES

1. THE LAW OF THE CASE DOCTRINE BARS RELITIGATION OF PETITIONER'S CLAIM FOR LEGAL SERVICES[18]

The Court of Appeals correctly applied the law of the case doctrine in the present matter. Petitioner's writ application should be denied.

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[18] Respondent does not suggest that the doctrine of law of the case bars this Court's jurisdiction. (See *Christianson v. Colt Industries Operating Corp.*, 486 U.S. 800, 817, 100 L. Ed. 2d 811, 831, 108 S. Ct. 2166 (1988).) It is not suggested that this Court's prior denial of the former writ application speaks to the merits of Petitioner's claims. (See *Missouri v. Jenkins*, 515 U.S. ___, 132 L. Ed. 2d 63, 115 S. Ct. 2038 (1995).) We are mindful that the doctrine differs from the principle of *res judicata*. (See *Southern Railway Co. v. Clift*, 260 U.S. 316, 319, 67 L. Ed. 283, 284, 43 S. Ct. 126 (1912) (observing that the doctrine of law of the case directs a court's discretion, while *res judicata* supercedes a court's discretion and compels judgment).) Respondent also is aware that the utility of the doctrine has been questioned where "ordinary litigation" is not involved. (See *Arizona v. California*, 460 U.S. 605, n. 8, 75 L. Ed. 2d 318, 103 S. Ct. 1382 (1983).)

"Under [the] doctrine, a court should not reopen issues decided in earlier stages of the same litigation."[19] It has been observed that the doctrine will not apply where a court is "convinced that [its prior holding] is clearly erroneous and would work a manifest injustice."[20] A prior holding also will not be followed where a) an interim change in the law occurs,[21] or b) issues not presented or decided in the prior appeal are subsequently raised.[22]

The prior appellate ruling is not erroneous and works no injustice. Little was proper with Petitioner's first application, or the present one. Indeed, both were "totally inadequate" under the decisions of the Circuit.[23] The prior opinion on the issue of Petitioner's right to an award of attorney's fees can cause no manifest injustice to either Petitioner or the plaintiffs in the civil action. Petitioner is not a party.[24]

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[19] *Agostini v. Felton*, 521 U.S. ___, 138 L. Ed. 2d 391, 423, 117 S. Ct. 1997 (1997), citing, *Messenger v. Anderson*, 225 U.S. 436, 444, 56 L. Ed. 1152, 32 S. Ct. 739 (1912).

[20] *Arizona v. California*, 460 U.S. 605, 618-19, 75 L. Ed. 2d 318, 333, 103 S. Ct. 1382 (1983).

[21] *Agostini*, 138 L. Ed. 2d at 423.

[22] See *Conway v. Chemical Leaman Tank Lines, Inc.*, 644 F.2d 1059, 1062 (5th Cir. 1981).

[23] See *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974); *Rainey v. Jackson State College*, 551 F.2d 672, 676 (5th Cir. 1977).

[24] 42 U.S.C. § 1988. See *Richards v. Reed*, 611 F.2d 545, 546 (5th Cir. 1980); *Brown v. General Motors Corp., Chevrolet Division*, 722 F.2d 1009, 1011 (2nd Cir. 1983) (generally noting an award of attorney's fees must be sought in the name of the party, not his attorney); *Collins v. Romer*, 962 F.2d 1508, 1516 (10th Cir. 1992)

Of the remaining reasons cited against the application of the doctrine, only the subsequently raised issues exception can be even remotely considered as a possible grounds to justify the granting of the present writ. However, a simple review of the application and affidavit, even if they were otherwise adequate in other respects, demonstrates that no plausible new facts or issues are raised.

In the present application, Petitioner alleges a greater number of hours of services rendered for his "clients". He seeks amounts for work in connection with the prior appellate proceedings on his first application and for preparation of the present application. The affidavit contains a listing of dates, general descriptions of the services purportedly rendered or work done, and time entries for each. However, taken as a whole, these claims are wholly "implausible on their face". The service descriptions and time entries standing alone suggest that only minimal effort could have been made to reconstruct them, or that only a cursory review was made of any contemporaneous records.

At least 34 of the daily entries are in excess of 24 hours. The affidavit shows 2,419.5 hours of services or other work from September 27, 1962 to 1972.[25] Nevertheless, an additional 1,600 hour *in globo* entry is included

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(an award of attorney's "fees shall be made to a party rather than to that party's attorney"); see also *Kay v. Ehrler*, 499 U.S. 432, 437-38, 113 L. Ed. 2d 486, 492-93, 111 S. Ct. 1435 (1991).

[25] This includes 460 hours in a single entry for the entirety of 1966.

for the same period and described as "Hours of Accompaniment (Estimated)". Surely, the subsequently raised issues exception does not envision, and was never intended to allow for relitigation of issues based upon such wholly implausible "new" facts as those asserted by Petitioner in the present affidavit in support of his application.

2. PETITIONER'S REMAINING CLAIMS WERE PROPERLY DENIED

The remainder of the Court of Appeals ruling addresses the claims for the two periods from May 1, 1981 to April 22, 1996, inclusive. The rulings are correct.

The claims for these two periods clearly appear limited to Petitioner's unsuccessful efforts to overturn the initial District Court order denying his first application, and the preparation of the present application. None of the entries suggest that fees are sought for any services rendered on behalf of any plaintiff in the civil action, even though Petitioner purports to be the "only remaining active 'Attorney-of-Record' for the original plaintiffs and members of their class".[26] 42 U.S.C. § 1988 does not contemplate that an award of attorney's fees is available

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[26] Petitioner cites a May 25, 1960 judgment as either certifying or recognizing that the civil action was a class action. The May 25, 1960 judgment is contained in Appendix "I", App. 32.

The Court of Appeals observed in the 1983 opinion on appeal that the last reference in the record to Petitioner appearing as a counsel of record was in 1974. See Appendix "D", App. 13.

for a *pro se* attorney's efforts in prosecution of his own claim for an award of attorney's fees.[27]

CONCLUSION

For all the foregoing reasons the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

Attorneys for Respondent
East Baton Rouge Parish School Board:

CHARLES L. PATIN, JR. (La. Bar Roll No. 10388)
Counsel of Record
KEAN, MILLER, HAWTHORNE, D'ARMOND, MCCOWAN & JARMAN, L.L.P.
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Post Office Box 3513
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Facsimile: (504) 388-9133

[27] See Note 24, *infra*.

APPENDIX "A"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus CIVIL ACTION
NUMBER: 1662-a

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

$$$

Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00).

Respectfully submitted,

JOHNNIE A. JONES,
Movant in Proper
Person:

/s/ Johnnie A. Jones
JOHNNIE A. JONES
Jones & Jones
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: April 16, 1981

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus CIVIL ACTION
NUMBER: 1662-A

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

$$$

the Court may fix a day, date and time to take up the matter.

Very truly yours,

JOHNNIE A. JONES,
Movant to Proper
Person:

/s/ Johnnie A. Jones
JOHNNIE A. JONES
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

DATED: April 16, 1981

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this day and by regular United States Mail a copy of the above and foregoing "Notice of Motion," together with the therein referenced "Motion for Attorney's Fees" and a copy of its companioned "Memorandum of Authority," all as required by Local Rule 5C of this Court, have been served upon the Attorney for the Defendant, East Baton Rouge Parish School Board, addressed as follows:

Mr. John F. Ward
Attorney at Law
Quad One, Suite "C"
1111 South Foster Drive
Baton Rouge, Louisiana 70806

Baton Rouge Louisiana, this 16 April, 1981.

/s/ Johnnie A. Jones
JOHNNIE A. JONES
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

APPENDIX "B"

IN THE

UNITED STATES DISTRICT COURT

FOR THE

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL.

versus CIVIL ACTION
NUMBER: 1662-a

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

$$$

(2,800 hours) in working with this case, and parties, students and persons who were and are involved in this case: but, however, he does hereby fix his fee for this long outstanding Civil Rights Action and [C]omplex [L]itigation at One Hundred Twenty-five Dollars per hour for twenty-eight hundred hours ($125.00 X 2800 hours); that, therefore, his fee is in the full and true sum of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00), which amount the defendants, EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL., owe him under the provisions of "The Civil Rights Attorney's Fees Awards Act of 1976," 42 U.S.C. §1988.

/s/ Johnnie A. Jones
JOHNNIE A. JONES

AND SUBSCRIBED, before me, this 22 day of April, 1981

/s/ Illegible
Notary Public

CERTIFICATE OF SERVICE

The undersigned does hereby certify that on this day and by regular United States Mail a copy of the above and foregoing "Notice of Motion," together with the therein referenced "Motion for Attorney's Fees" and a copy of its companioned "Memorandum of Authority," all as required by Local Rule 5C of this Court, have been

served upon the Attorney for the Defendant, East Baton Rouge Parish School Board, addressed as follows:

Mr. John F. Ward
Attorney at Law
Quad One, Suite "C"
1111 South Foster Drive
Baton Rouge, Louisiana 70806

Baton Rouge Louisiana, this 16 April, 1981.

/s/ Johnnie A. Jones
JOHNNIE A. JONES
JONES & JONES
Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

APPENDIX "C"

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

MINUTE ENTRY:
MAY 1, 1981
PARKER, C.J.

CLIFFORD EUGENE DAVIS, JR., ET AL. CIVIL ACTION

VERSUS NUMBER 1662-A

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.

* * *

This matter is before the Court on a motion filed by Johnnie A. Jones, Attorney at Law, requesting that the Court fix his attorney's fees at $350,000 and assess them against the defendant School Board under 42 U.S.C. §1988. In support of that motion, mover has filed a generalized declaration that he has been an attorney of record "over the years" and that he has accumulated "more than 2,800 hours" in work on this case and that he desires to be paid at the rate of $125 per hour. Mover does not specify what actual work he has performed or when and has not met any of the other factors which are required to be considered under *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir.1974); *Rainey v. Jackson State College*, 551 F.2d 672 (5th Cir.1977); and *Anthony v. Marion County General Hospital*, 617 F.2d 1164 (5th Cir.1980).

For these reasons, the motion to fix attorney's fees is hereby DENIED.

/s/ John V. Parker
CHIEF JUDGE
MIDDLE DISTRICT
OF LOUISIANA

APPENDIX "D"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-3287
Summary Calendar

CLIFFORD EUGENE DAVIS, JR., ET AL.,

Plaintiffs.

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Defendants-Appellees,

versus

JOHNNIE JONES,

Movant-Appellant.

Appeal from the United States District Court
for the Middle District of Louisiana

(OCTOBER 24, 1983)

Before REAVLEY, RANDALL and WILLIAMS, Circuit Judges.

PER CURIAM:

This appeal is by attorney Johnnie A. Jones, who is one of a number of attorneys who have participated at one time or another in the suit by various plaintiffs to desegregate the public school system of East Baton Rouge Parish, Louisiana. This suit was commenced February 29, 1956, and still continues.

In 1981, Jones filed an affidavit forming the basis of his motion for $350,000 attorneys' fees for 2,800 hours of work on behalf of plaintiffs in this case. The district court denied the request for attorneys' fees in full, and attorney Jones has appealed.

Under 42 U.S.C. § 1988, the district court, "in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs." It should be noted that an award of attorney's fees is discretionary, and by statute the award is to the prevailing "party".

It is instructive to reproduce in full, except for the formalities, the affidavit filed by attorney Jones supporting his claim for attorneys' fees. It reads as follows:

> PERSONALLY CAME AND APPEARED:
> JOHNNIE A. JONES
> who, upon Oath, did depose and say:
>
> That he is one of the [A]ttorneys of [R]ecord in the above entitled and numbered cause; that he has been an attorney of record over the years and, as such, has accumulated more than two thousand eight hundred hours (2,800 hours) in working with this case, and parties, students and persons who were and are involved in this case; but, however, he does hereby fix his fee for

> this long outstanding Civil Rights Action and [C]omplex [L]itigation at One Hundred Twenty-five Dollars per hour for twenty-eight hundred hours ($125.00 x 2800 hours); that, therefore, his fee is in the full and true sum of Three Hundred Fifty Thousand and No/100 Dollars ($350,000.00), which amount the defendants, EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL., owe him under the provisions of "The Civil Rights Attorney's Fees Awards Act of 1976," 42 U.S.C. § 1988.
>
> Signed Johnnie A. Jones

It appears that appellant Jones is one of a substantial number of counsel who have appeared as co-counsel in the East Baton Rouge Parish desegregation case. The last reference to appellant appearing as a representative of one of the parties in the case is in 1974.

The district court found this claim for attorneys' fees totally inadequate under our decision in *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717 (5th Cir. 1974). That case establishes the requirements for advancing attorneys' fees claims. Those requirements have been confirmed by us as applicable to civil rights cases. *Rainey v. Jackson State College*, 551 F.2d 672, 676 (5th Cir. 1977). *Johnson* establishes a detailed list of criteria which must be proved by a party claiming attorneys' fees. The district court was correct in finding that this affidavit is totally inadequate to carry that responsibility.

Appellant's reply to this conclusion is that all of his work is contained in the voluminous record which has been built in this case, and his activities can be extracted

from that record. It is remarkable and totally unacceptable that he expects the district court to extract this information from the record. In any event, it is obvious that appellant Jones does not even list his clients, although they are the "parties" who must recover attorneys' fees. We do not know from his affidavit whom he represented, when he represented them, what he did at all in connection with their representation. There is no need to go into a datailed [sic] analysis of all of the Johnson factors in view of the total inadequacy of appellant's claim.

We must conclude that the district court was correct in its discretionary denial of attorneys' fees to appellant Jones.

AFFIRMED.

APPENDIX "E"

IN THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

* * *

NUMBER: 81-3287

* * *

CLIFFORD EUGENE DAVIS, JR., ET AL.,
Plaintiffs-Appellants

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,
Defendants-Appellees

****

Appeal from the United States District Court for the Middle Sistrict [sic] of Louisiana, Section 'A, ' [sic] the Honorable John V. Parker, Judge Presiding

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PETITION FOR REHEARING

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Attorneys for
Plaintiffs-Appellants:

JONES & JONES

JOHNNIE A. JONES,
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Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
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IN THE

UNITED STATES COURT OF APPEALS

FOR THE

FIFTH CIRCUIT

* * *

NUMBER: 81-3287

* * *

CLIFFORD EUGENE DAVIS, JR., ET AL.,
and JOHNNIE A. JONES, Attorney,
Plaintiffs-Appellants

versus

EAST BATON ROUGE PARISH SCHOOL BOARD,
ET AL.,
Defendants-Appellees

****

PETITION FOR REHEARING

NOW INTO COURT, pursuant to Rule 40 of the Federal Rules of Appellate Procedure, comes the appellant, JOHNNIE A. JONES, *pro se*, suggesting that a rehearing be granted herein, for this, to-wit:

-1-

This Court erred in affirming the Judgment of the District Court denying appellant, JOHNNIE A. JONES, one of the attorneys for the original plaintiffs and intervenors in this action, recovery of attorney's fees under 'The Civil Rights Attorney's Fees Awards Act of 1976,' 42 U.S.C. § 1988; and by not remanding the case to the District Court to permit Appellant to meet the essential

requirements to establish his claim to attorney's in this continuing-ongoing, long-outstanding and complexed Civil Rights litigation.

> Where award of attorneys' fee in equal employment opportunities case did not eludicate factors upon which it was based and showed no correlation to facts and figures submitted by plaintiff and where no differentiation was made between experienced and nonexperienced attorneys representing plaintiff and disallowance of 239.5 to 299.5 of 659.5 hours claimed was unexplained, *case was remanded* for reconsideration in light of prescribed guidelines. Civil Rights of 1964, §§ 201 et seq., 706(k), 42 U.S.C.A. §§ 2000a et seq., 2000e-5(g, k). (Underscoring added for emphasis.)

-2-

The case should be remanded to the District Court to permit appellant, JOHNNIE A. JONES, as one of the attorneys for the original plaintiffs and intervenors in this action which commenced February 29, 1956, and still continues, to meet the requirements necessary to establish the detailed list of criteria which must be proved by a party claiming attorneys' fees: and to list the names of the plaintiffs and intervenors Appellant represented by extracting this information from the voluminous record.

> An attorney's record of time is not a talisman. *Raniey v. Jackson State College* (CA5 1977), 551 F. 2d 672, at 677.

It is submitted that under the discretionary-fee-award provision of Title II of the Civil Rights Act of 1964

it was held that successful plaintiffs were entitled to the recovery of fees "unless special circumstances would render such an award unjust." Cf. *Newman* v. *Piggie Park Enterprises, Inc.* (1968) 396 U.S. 400, at 402.

WHEREFORE, upon the above and foregoing grounds, appellant, JOHNNIE A. JONES, prays that the Opinion/Judgment of this court rendered in this action on October 24, 1983, and received by undersigned counsel on October 25, 1983, be annulled, set aside and vacated; that it be replaced with an Opinion/Judgment of this Court remanding the case to the District Court with directions and instructions for the District Court in accordance with the general tenor of this, Appellant's 'Petition for Rehearing.'

Respectfully submitted,

Attorneys for Plaintiffs-
Appellants
and JOHNNIE A. JONES,
Attorney-Appellant *pro se*:
JONES & JONES

DATED: November 4, 1983

/s/ Johnnie A Jones
JOHNNIE A. JONES
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

CERTIFICATE OF SERVICE

Undersigned counsel of record for the plaintiffs-appellants, Clifford Eugene Davis, Jr., Et Al., and attorney-appellant, Johnnie A. Jones, *pro se*, does hereby certify that a copy of the above and foregoing 'Petition for Rehearing' has this day, by regular United States Mail, first-class postage prepaid, been forwarded addressed as follows:

Mr. John F. Ward
Ward & Hammonds
Attorneys at Law
Quad One, Suite 'C'
1111 South Foster Drive
Post Office Box 65236
Baton Rouge, Louisiana 70806
Telephone: 504/923-3462

Baton Rouge, Louisiana, this 4 day of November, 1983.

/s/ Johnnie A Jones
JOHNNIE A. JONES
Jones & Jones, Attorneys at Law
Taylor Building, Suite 215
251 Florida Street
Baton Rouge, Louisiana 70801
Telephone: 504/383-8573

APPENDIX "F"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 81-3287

CLIFFORD EUGENE DAVIS, JR., ET AL.,

Plaintiffs,

versus

EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL.,

Defendants-Appellees,

versus

JOHNNIE JONES,

Movant-Appellant.

Appeal from the United States District Court for the Middle District of Louisiana

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ON PETITION FOR REHEARING

(November 21, 1983)

Before REAVLEY, RANDALL and WILLIAMS, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/S/ illegible
United States Circuit Judge

APPENDIX "G"

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF LOUISIANA

CLIFFORD EUGENE DAVIS, JR., ET AL	)	CIVIL ACTION
VERSUS	)	NO. 56-1662-A
EAST BATON ROUGE PARISH SCHOOL BOARD, ET AL	)	

RULING ON MOTIONS

This matter is before the court on a motion by Johnnie A. Jones for an award of attorney's fees and a motion by the City of Baker to intervene.

I. Motion by Jones for Attorney's Fees

Johnnie Jones contends that he is entitled to compensation for some 4,850 hours of legal services that he performed for the plaintiffs in this case commencing on September 27, 1962 through the preparation of the motion at hand. Jone's [sic] affidavit indicates that approximately 4660 hours relate to services he performed through April of 1981. Approximately 155 hours were spent on an unsuccessful appeal of a prior motion by Jones for attorney's fees in May through June of 1981. Additionally, Jones claims to have expended 35 hours in his preparation of the motion presently before the court.

The question of whether Jones is entitled to compensation for services rendered through April of 1981 is a question that has been finally adjudged through the United States Supreme Court. See, **Davis v. East Baton**

Rouge Parish School Board, 719 F2d 403 (5th Cir. 1983), cert. denied, 469 U.S. 1227, 105 S.Ct. 1224, 84 L.Ed.2d 364 (1985). The court agrees with the School Board that the request for fees through April of 1981 is a matter that is res judicata.

The request for fees connected with the 1981 appeal is clearly unwarranted in view of the fact that the Fifth Circuit found his prior submission to be "totally inadequate". Consequently, the request for fees connected with the present motion is likewise unfounded.

II. Motion by City of Baker to Intervene[1]

The City of Baker contends that it is entitled to intervene of right under Fed. Rule Civ. P. 24(a)(2) because it has a cognizable interest in this matter that will not be adequately represented by the present parties to this lawsuit. In its proposed petition of intervention, the City of Baker identifies its purpose or interest in intervening as follows:

> "(1) to establish that the creation of its independent school system will not impede the creation of unitary system(s) in the Parish; and (2) to participate in submitting desegregation plan(s) consistent with the existence of an independent system in the City of Baker." Proposed Petition of Intervention, paragraph five.

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[1] On July 31st, the City of Baker filed a "request to delay ruling" on its motion to intervene for an additional ninety days. The court finds no reason for delaying any further.

The City argues that the "Baker School system", which has been authorized by constitutional amendment[2] and statute[3], will not impede the dismantling of the former dual system in East Baton Rouge Parish. The City of Baker argues that the "Baker School system" is presently in effect and its "status" should be addressed now. According to the City of Baker, if it is not allowed to intervene it will "likely be enjoined from proceeding by one of the parties presently in this lawsuit. Alternatively, the City of Baker moves for permissive intervention based upon the same arguments.

The opponents argue that the motion for intervention should be denied because the issue is not ripe for adjudication. Opponents argue that the City of Baker must at a minimum: (1) develop a single member district election plan; (2) obtain preclearance from the Department of Justice; and (3) hold an election for school board members in the fall of 1998. According to opponents, it is purely speculative what the "Baker school system" will be prior to the time that there is a new school board in place because only the school board is empowered to establish a plan for the operation of schools in Baker. Consequently, it would be premature for the court to consider the questions raised in the proposed intervention.

The court agrees with the present parties to this lawsuit that the City of Baker itself does not have a

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[2] Article VIII, Sec. 13(D) of the Louisiana Constitution.

[3] Act 973 of the 1995 Regular Session of the Louisiana Legislature.

"direct, substantial, legally protectable interest" in these proceedings. Act 973 makes it plain that the Baker School Board will be the entity authorized to adopt rules and regulations pertaining to the Baker school system. La. R.S. 17:72(H). It is well established that an applicant for intervention of right must have a "direct, substantial, legally protectable" in the litigation. **New Orleans Public Service, Inc. v. United Gas Pipe Line Co.,** 732 F.2d 452 (5th Cir. 1984), cert. denied, 469 U.S. 1019, 105 S.Ct. 434, 83 L.Ed.2d 360 (1984). The interest must be one that the substantive law recognizes as belonging to the applicant, Id, at p. 464.

The first reason given by the City of Baker for its proposed intervention is to establish that the creation of its independent school system will not impede the creation of unitary system(s) in the Parish. Act 973 authorizes the City to develop election districts and order elections for the Baker School Board. That is the extent of the legal authority given the City of Baker. Act 973 makes it plain that the Baker School Board will be the entity authorized to adopt rules and regulations pertaining to the establishment and operation of the Baker School system. La. R.S. 17:72(H). The city is anticipating that a suit will be filed to enjoin implementation of Act 973. As yet, however, there is no actual controversy relating to the creation of election districts for members of the Baker School Board and the holding of elections in the fall of 1998. Thus, it is clear that the City of Baker has no legally protectable interest in any issue presently being litigated in these proceedings

The second reason advanced by the City of Baker is to participate in submitting a desegregation plan to the

court. As noted above, the City of Baker has no authority to act as a school boar. The Baker School Board, rather than the City of Baker, will be the legal entity authorized to establish a plan for the operation of public schools in Baker. Consequently, it is clear that the City of Baker has no cognizable interest belonging to it that would support an intervention or right.

In its reply brief, the City of Baker contends that the "Baker school system" is in existence because Act 973 provides that: "[o]n the effective date of this Section, there shall be established a municipal school system in the city of Baker." There is no dispute that the Act became effective upon the passing of the constitutional amendment last fall. The City argues that this legislation created a school system and a school board for the City of Baker despite the fact that no school board members have yet been elected. According to the City of Baker, the East Baton Rouge Parish school system no longer includes the territorial jurisdiction of the City of Baker. It contends that its presence is "absolutely required" to have a complete adjudication of this case. In short, the City contends that it is the proper party to act for the Baker School Board until its members are elected.[4]

While the Act does purport to establish a municipal school system in the City of Baker as of the passage of the constitutional amendment last fall, the reality is that there is no Baker school system in place. There has to be a plan

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[4] The City additionally argues that the Education Commission for the Baker school system is effectively operating the Baker school system. The court finds no merit to this argument in fact or in law.

established by the proper governing authority, i.e. the Baker School Board, before this court has anything to rule on. The Act makes it plain that the East Baton Rouge Parish School Board has until January 1, 1997, to develop an election plan that excludes the City of Baker. The Legislature has not shortened the length of the terms of the members presently on the East Baton Rouge School Board and they continue to represent the entire parish until their successors are elected. As the City itself observes, the Act merely authorizes the City to "set up" the Baker school system. As a practical matter, until the Baker school system is "set up", there is nothing for this court to rule on with respect to that system.

The court observes that the City has presented no separate argument relating to its request to permissively intervene. One of the things that the City would have to establish under Fed. Rule Civ. P. 24 (b) is that it has a claim or defense that has a common question of law or fact with the main action. For the reasons noted above, the court finds that the request for permissive intervention should likewise be denied.

In short, the court finds that City the [sic] Baker has no right to intervene in these proceedings. The matter may be revisited, however, if and when a Baker School Board, having the power to sue and be sued, is established and moves for intervention.

III. Conclusion

Accordingly, the motion by Jones for attorney's fees is hereby DENIED and the motion by the City of Baker to intervene is hereby DENIED.

Baton Rouge, Louisiana, September 18, 1996.

/s/ John V. Parker
JOHN V. PARKER,
CHIEF JUDGE
MIDDLE DISTRICT OF
LOUISIANA

APPENDIX "H"

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 96-31074
Summary Calendar

CLIFFORD EUGENE DAVIS, JR. and
UNITED STATES OF AMERICA,

Plaintiffs,

JOHNNIE A. JONES,

Movant-Appellant,

versus

EAST BATON ROUGH PARISH
SCHOOL BOARD, a Corporation,

Defendant-Appellee.

Appeal from the United States District Court for
the Middle District of Louisiana
(56-CV-1662)

(Filed Sep. 10, 1997)

Before REAVLEY, JOLLY and HIGGINBOTHAM, Circuit Judges.

PER CURIAM:*

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* Pursuant to 5TH CIR. R. 47.5, the Court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

Johnnie Jones appeals an order denying his request for over $1.2 million in attorney's fees for his work in this decades-old desegregation suit, over which the district court has retained jurisdiction. We conclude that we have appellate jurisdiction under the collateral order doctrine, *see Walker v. U.S. Dept. of Housing and Urban Dev.*, 99 F.3d 761, 766-67 (5th Cir. 1996), and affirm.

In 1981 Jones filed a similar request for fees. The district court denied the motion, reasoning that Jones had not complied with the requirements of *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714 (5th Cir. 1974), and related cases. Jones appealed the order and we affirmed in an unpublished opinion. *Davis v. East Baton Rough* [sic] *Parish School Bd.*, No. 81-3287 (5th Cir. Oct. 24, 1983). We agreed with the district court that his fee application was "totally inadequate" under *Johnson. Davis, supra,* at 3.

In 1996 Jones filed a motion for attorney's fees which is the subject of the present appeal. The district court properly denied the motion, since both the district court and this court are bound by the prior appellate decision under the law of the case doctrine. That doctrine "precludes reexamination of issues decided on appeal, either by the district court on remand or by the appellate court itself upon a subsequent appeal." *Quest Medical, Inc. v. Apprill,* 90 F.3d 1080, 1094 (5th Cir. 1996).

Recognized exceptions to the law of the case doctrine are that "evidence in the subsequent trial is substantially different, the prior decision was clearly erroneous and would work manifest injustice, or controlling authority has in the interim made a contrary rule of law applicable." *Id.* The only conceivable exception which might

apply here is that Jones has somehow augmented his fee request with additional evidence.

The renewed fee request, however, remains totally inadequate to support an award. We noted in the prior appeal that Jones "does not even list his clients, although they are the 'parties' who must recover attorneys' fees." *Davis, supra,* at 3. In his renewed motion for fees, Jones again fails to list which plaintiffs he represented, fails to move for fees on their behalf, and instead requests fees as "movant in proper person." The fee request fails to delineate, among other *Johnson* factors, the novelty and difficulty of the questions presented in the case, whether the fee agreement with the clients was fixed or contingent, or the results obtained. *See Johnson,* 488 F.2d at 718.

While, unlike the first fee request, Jones breaks down his work into various dated entries in an affidavit, those entries are implausible on their face. Many of the entries indicate that Jones worked more than 24 hours in a single day. By way of example, Jones claims he spent 157.5 hours on July 23, 1970 (at a requested rate of $250 an hour) on a "memorandum opinion and order." Further, the only work Jones claims to have done after April 16, 1981, the date of his first fee motion, involved his unsuccessful quest for attorney's fees. Accordingly, we follow our prior decision.

AFFIRMED.

APPENDIX "I"

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA
BATON ROUGE DIVISION

CLIFFORD EUGENE DAVIS, JR., a minor by his father and next friend, Clifford Eugene Davis, Sr., et al Plaintiffs, versus EAST BATON ROUGE PARISH SCHOOL BOARD, a corporation, and LLOYD FUNCHESS, as Superintendent of Public Schools in East Baton Rouge Parish Defendants	NO. 1662 CIVIL ACTION

JUDGMENT

This cause having come on for hearing on the 29th day of April, 1960, on plaintiffs' motion for summary judgment, and the court being of the opinion that the motion for summary judgment should be granted,

IT IS ORDERED, ADJUDGED AND DECREED that the defendant East Baton Rouge Parish School Board, its agents, its servants, its employees and successors in office, and those acting in concert with them, be, and they are hereby, restrained and enjoined from requiring segregation of the races in any school under their supervision, and from engaging in any and all action which

limits or affects the admission to, attendance in, or education of plaintiffs or any other negro child similarly situated in schools under defendants' jurisdiction, on the basis of race and color, from and after such time as may be necessary to make arrangements for admission of children to such schools on a racially non-discriminatory basis with all deliberate speed, as required by the decision of the Supreme Court in *Brown v. Board of Education of Topeka*, 349 U.S. 294.

This court retains jurisdiction of this cause for the purpose of entering such further orders or granting such further relief as may be necessary to bring about compliance with this decree.

May 25, 1960

/s/ J. Scully Wright
UNITED STATES
DISTRICT JUDGE